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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,464	05/09/2001	Ray Milkey	PA1676US	6037

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EXAMINER
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SIDDIQI, MOHAMMAD A

ART UNIT	PAPER NUMBER
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2154

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/852,464	<b>Applicant(s)</b> MILKEY ET AL.	
	<b>Examiner</b> Mohammad A. Siddiqi	<b>Art Unit</b> 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,9-13,17-26,28,30,33-48 and 50-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,9-13,17-26,28,30,33-48 and 50-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/31/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-58 are presented for examination. Claims 5-8, 14-16, 27, 29, 31-32 and 49 have been cancelled.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claim 1-4, 9-13, 17-23, 26, 30, 33-36, 38- 43, 46-48, and 57-58 are rejected under 35 U.S.C. 102(e) as being anticipated by over Mitsutake et al. (6,240,460) (hereinafter Mitsutake).

4. As per claims 1, Mitsutake discloses a method for transferring files among devices in a network, comprising:

identifying the file to be transferred from the source device (data transmission identifier, col 16, lines 15-30; 18, lines 29-49), wherein a pre-fetch module at a destination device identifies the file (pre-fetch module is interpreted as an application module contained in data receiver, 2, fig 21, col 19, lines 4-11) to be transferred from the source device (1, 2, 3, fig 6; col 16, lines 15-30; 18, lines 29-49) based on, in part, observation of user behavior (use of bandwidth change sensing, 93, fig 10, 2, fig 16, col 17, lines 24-67; col 18, lines 1-49);

requesting via the destination device, a transfer of the identified file from the source device (1, 2, fig 1, col 16, lines 15-30);

scheduling the transfer (3, fig 6) of the file from the source device (1, fig 6) to the requesting destination device (2, fig 6), wherein the transfer is scheduled to be completed by a deadline (end time of the period in which the data transmission should be terminated, col 18, lines 41-49); and

transferring the file from the source device (1, fig 6) to the requesting destination device (2, fig 6), wherein the file transfer from the source device to the requesting destination device is complete by the scheduled deadline (end time of the period in which the data transmission should be terminated, col 16, lines 15-30; 18, lines 29-49).

5. As per claim 11, the claim is rejected for the same reasons as claim 1, above. In addition Mitsutake discloses a destination device (2, fig 6) configured to send a request to a source device (1, fig 6, col 16, lines 15-30) for transfer of a file from the source device to the destination device (characteristic information, 1, 2, 3, fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30);

a source device (1, fig 6, col 16, lines 15-30) configured to transfer the file to the destination device requesting the transfer of the file (characteristic information, 1, 2, 3, fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30); and

a scheduling module (3, fig 6) configured to schedule the transfer (col 11, lines 1-21; col 16, lines 15-30) of the file from the source device in response to the request by the destination device (col 16, lines 15-30; 18, lines 29-49).

6. As per claim 26, the claim is rejected for the same reasons as claim 1, above. In addition Mitsutake discloses identifying a file via destination device, wherein the file is to be transferred to the destination device (characteristic information, 1, 2, 3, fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30);

selecting a source device (characteristic information, 1, 2, 3, fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30) to transfer the file (characteristic information, 1, 2, 3, fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30); col 18, lines 29-56); and scheduling the transfer of the file from the selected source device (characteristic information, 1, 2, 3, fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30; col 18, lines 29-56).

7. As per claim 38, the claim is rejected for the same reasons as claim 11, above.

8. As per claim 57, the claim is rejected for the same reasons as claim 1, above.

9. As per claim 58, the claim is rejected for the same reasons as claim 1, above. In addition Mitsutake discloses a plurality of servers configured to deliver content to the devices in the network (characteristic information, elements of fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30; col 18, lines 29-56);

a plurality of clients configured to receive content from the plurality of

servers (characteristic information, elements of fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30; col 18, lines 29-56); and

a scheduling module (control section, 3, fig 6; col 16, 54-67) configured to determine schedules for delivery of content from the plurality of servers to the plurality of (characteristic information, elements of fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30; col 18, lines 29-56), the

schedules (control section, 3, fig 6; col 16, 54-67) being based on available bandwidth at the plurality of servers (characteristic information, elements of fig 6, col 10, lines 65-67; col 11, lines 1-4; col 16, lines 15-30; col 18, lines 29-56), available bandwidth at the plurality of clients (control section, 3, fig 6; col 16, lines 15-30; 54-67), and

available bandwidth in the network between the plurality of servers and clients (control section, Summary of the invention; 3, fig 6; col 16, lines 15-30; 54-67).

10. As per claims 2, 18, and 34, Mitsutake discloses wherein the step of scheduling comprises determining available bandwidth between the source device and the destination device (determining and observing the use of bandwidth, col 9, lines 7-45).

11. As per claims 3 and 19, Mitsutake discloses the step of scheduling includes determining available storage at the destination device (col 10, lines 22-41).

12. As per claims 4, 13, and 33, Mitsutake discloses a user at the destination device specifies the deadline (end time of the period in which the data transmission should be terminated, col 16, lines 15-30; 18, lines 29-49).

13. As per claims 9 and 17, Mitsutake discloses wherein the pre-fetch module is further configured to identify files to be transferred according to predetermined user preferences (data reception station name, data transmission instructions based data transmission control information prepared by an application, col 17, lines 24-67; col 18, lines 1-49).

14. As per claim 10, Mitsutake discloses a device other than the destination device requests the file transfer from the source device (elements of fig 6, col 16, lines 15-30).



15. As per claims 12 and 30, Mitsutake discloses the scheduling module schedules the transfer to be complete by a deadline (end time, col 17, lines 24-67; col 18, lines 1-49).

16. As per claims 20 and 35, Mitsutake discloses the scheduling module schedules the transfer of the file based on available bandwidth in the network (determining and observing the use of bandwidth anticipated by control section, col 9, lines 7-45).

17. As per claims 21 and 40, Mitsutake discloses the scheduling module resides at the source device (3, fig 6, col 9, lines 7-45).

18. As per claim 22, Mitsutake discloses the scheduling module resides at the destination device (2, fig 1, col 10, lines 23-42).

19. As per claim 23, Mitsutake discloses the scheduling module resides in both the destination device and the source device (1, 2, fig 1).

20. As per claim 36, Mitsutake discloses the source device is a server (col 16, lines 14-30).

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21. As per claim 39, Mitsutake discloses the content is delivered to the client without a user being present at the client during delivery (having control section anticipates no user presence required, col 16, lines 14-30).

22. As per claim 41, the claim is rejected for the same reasons as claim 22, above.

23. As per claim 42, the claim is rejected for the same reasons as claim 23, above.

24. As per claim 43, Mitsutake discloses the control server monitors bandwidth and storage resources in the network and provides bandwidth and storage resources data to the scheduling module (determining and observing the use of bandwidth anticipated by control section, col 9, lines 7-45).

25. As per claim 46, Mitsutake discloses the client is a general-purpose computer (col 16, lines 15-30).

26. As per claim 47, Mitsutake discloses wherein the client is a set-top box (col 16, lines 15-30).

27. As per claim 48, Mitsutake discloses wherein the request for delivery comprises a deadline for delivery, the scheduling module determines a schedule for delivery to meet the deadline, and the server completes delivery of the content to the client by the deadline (end time, col 16, lines 15-30, col 17, lines 24-67; col 18, lines 1-49).

***Claim Rejections - 35 USC § 103***

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. Claims 24, 25, 28, 37, 50, 52, 53, 54, 55, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsutake et al. (6,240,460) (hereinafter Mitsutake) in view of Tzelnic et al. (6,061,504) (hereinafter Tzelnic).

30. As per claims 24 and 25, Mitsutake fails to disclose scheduling module resides in a cache device in the network. However, Tzelnic discloses scheduling module resides in a cache device in the network (col 2, lines 47-

51). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teaching of Mitsutake with Tzelnic because Tzelnic's use of caching data stream would provide Mitsutake's system a method faster data transfer.

31. As per claim 28, Mitsutake discloses the file is further identified, in part according to a user subscription (exchange of information, col 10, lines 65-67, col 11, lines 1-3).

32. As per claim 37, the claim is rejected for same reasons as claim 24, above. In addition Tzelnic discloses the source device is a cache device in the network (62, fig 6).

33. As per claim 50, the claim is rejected for the same reasons as claim 37, above.

34. As per claim 52, the claim is rejected for the same reasons as claim 37, above.

35. As per claim 53, the claim is rejected for the same reasons as claim 50, above. In addition Tzelnic discloses client comprises a cache

management module configured to determine the size of the cache (col 18, lines 1-6 and col 9, lines 14-19, software is exported to manage the transfer).

36. As per claim 54, the claim is rejected for the same reasons as claim 53, above.

37. As per claim 55, the claim is rejected for the same reasons as claim 54, above. In addition Tzelnic discloses cache replacement algorithms to add or remove content from the cache (col 18, lines 57-62).

38. As per claim 56, the claim is rejected for the same reasons as claim 54, above. In addition Mitsutake discloses monitor usage (col 6, lines 53-59).

39. Claims 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsutake et al. (6,240,460) (hereinafter Mitsutake) in view of Tzelnic et al. (6,061,504) (hereinafter Tzelnic) in further view of Saliba et al. (6,052,710) (hereinafter Saliba).

40. As per claim 51, Mitsutake fails to disclose the client comprises a mini web server configured to receive a request for content from a browser, determine that the requested content resides in the cache as pre-fetched content, and send the requested content from the cache to the browser instead of requesting the content from the server. Tzelnic discloses determine that the requested content resides in the cache as pre-fetched content (col 18, lines 1-9), and send the requested content from the cache to the client instead of requesting the content from the server (col 18, lines 9-18). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teaching of Mitsutake with Tzelnic because Tzelnic's use caching data stream would provide Mitsutake's system a method faster data transfer. Tzelnic fails to disclose a mini web server that is configured to receive a request for content from a browser. However, Saliba discloses the client (108, fig 7) includes a mini web server (704, fig 7) that is configured to receive a request for content from a browser (112, fig 7). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teaching of Mitsutake and Tzelnic with Saliba because Saliba's use of mini web server and browser would provide Mitsutake's and Tzelinc's system a robust scheduler with local cache management of data transfer.

41. Claims 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsutake et al. (6,240,460) (hereinafter Mitsutake) in view of Peinado et al. (6,775,655) (hereinafter Peinado).

42. As per claim 44, Mitsutake fails to disclose the server attaches digital rights management rules to the content prior to delivery. However, Peinado discloses attaches digital rights management rules to the content prior to delivery (col 3, lines 5-10). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teaching of Mitsutake with Peinado because Peinado's use of Digital rights management rules would provide Mitsutake's system a method of attaching license key to the transferred content.

43. As per claim 45 Mitsutake fails to disclose the client comprises a digital rights management module configured to implement digital rights management rules attached to the content. However, Peinado discloses the client includes a digital rights management module configured to implement digital rights management rules attached to the content (col 2, lines 56-61). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the teaching of Mitsutake with Peinado

because Peinado's use of Digital rights management rules would provide Mitsutake's system a method of obtaining license key from the server.

### ***Response to Arguments***

44. Applicant's arguments filed 03/27/2006 have been fully considered but they are not persuasive, therefore rejections to claims 1-4, 9-13, 17-26, 28, 30, 33-48, and 50-58 is maintained.

45. Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

46. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., pre-fetching content) are not recited in the



rejected claim(s). Claims are given their broadest reasonable interpretation, in light of and consistent with the written description of the invention in the application. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

47. In the remarks applicants argued that:

**Argument:** Mitsutake does not teach a pre-fetch module for identifying a file to be transferred from a source device to a destination device based on, in part, observation of user behavior.

**Response:** Mitsutake teaches pre-fetch module for identifying a file to be transferred from a source device to a destination device based on, in part, observation of user behavior (pre-fetch module is interpreted as an data transmission control module contained in data receiver 2,3, fig 21, col 19, lines 4-10, it is anticipated other modules such as data transfer instruction must be communicating users behavior to the source device such as change in bandwidth, 8, 93, fig 10, col 27, line 63 – col 28 line 32, please see summary of invention, data transmission instructions can also anticipates user behavior ).

***Conclusion***

48. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

U.S. Patent 5,802,292 and 6,085,193 teaches perfecting information based on the user behavior.

49. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohammad A. Siddiqi whose

telephone number is (571) 272-3976. The examiner can normally be reached on Monday -Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A. Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAS

 **JOHN FOLLANSBEE**  
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